

REMARKS

Claims 1-20 are presently pending in the case.

Reconsideration of the present case in view of the remarks herein is requested.

Allowable Claims

Applicant acknowledges with appreciation the Examiner's apparent indication that dependent claims 4 and 14 contain allowable subject matter since the claims were not rejected. However, since the claims depend from allowable independent claims, as discussed below, the claim have not been written into independent form, though Applicant reserves the right to do so.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 1-3, 5, 7, 8, 10-13, 15, 17, 18 and 20 under 35 USC 103(a) as being unpatentable over U.S. Patent 6,705,313 to Niccolai (hereinafter Niccolai) in view of U.S. Patent 4,249,526 to Dean et al (hereinafter Dean et al). The rejection is traversed.

Niccolai does not render claim 1, for example, unpatentable. Claim 1 is to an aerosolization apparatus comprising, inter alia, a body defining an aerosolization chamber wherein the aerosolization chamber is adapted to receive an elongated receptacle and wherein the elongated receptacle rotates end-over-end about an axis substantially orthogonal to an axis passing through an outlet opening. Niccolai does not disclose a capsule that rotates end-over-end. Instead, the capsule in Niccolai oscillates and rotates about its axis (see column 3 lines 10-40 and Figure 2). Since Niccolai does not disclose this positively recited feature, Niccolai does not render claim 1 unpatentable.

Claim 1 is also not rendered unpatentable by Niccolai when taken with the teachings of Dean et al. As discussed above, claim 1 recites that the elongated receptacle rotates end-over-end about an axis substantially orthogonal to an axis passing through an outlet opening. Dean et al teaches a device where a capsule rotates end-over-end about an axis that is not orthogonal to the axis of the opening. Since neither Niccolai or Dean et al disclose, teach, or

suggest the feature positively set forth in the claim, the Examiner has failed to establish a prima facie case of obviousness. Accordingly, claim 1 is allowable over any combination of the references.

Independent claim 10 also recites the "end-over-end" rotation about the orthogonal axis, and is also not rendered unpatentable by Niccolai and Dean et al.

Claims 2-9 and 11-20 depend from claims 1 or 10 and are not rendered unpatentable by Niccolai and Dean et al for at least the same reason as the claim from which they depend.

The Examiner rejected claims 6, 9, 16, and 19 under 35 USC 103(a) as being unpatentable over Niccolai and Dean et al and further in view of U.S. Patent 5,614,217 to Chiprich et al (hereinafter Chiprich et al). The rejection is traversed.

Claims 6, 9, 16, and 19 depend from either claim 1 or claim 10 and include all of the limitations of the claim from which they depend. Chiprich et al does not make up for the deficiencies of Niccolai and Dean et al in rendering claims 1 or 10 unpatentable. Accordingly, claims 6, 9, 16, and 19 are also not rendered unpatentable by Niccolai, Dean et al and Chiprich et al.

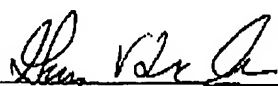
Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

NEKTAR THERAPEUTICS
(formerly INHALE THERAPEUTIC
SYSTEMS)

Dated: 10 JULY 2006

By: 
Guy V. Tucker
Reg. No. 45,302

Please send all correspondence to:
Guy Tucker
Nektar Therapeutics
(formerly Inhale Therapeutic Systems, Inc.)
150 Industrial Road
San Carlos, CA 94070
Phone: (650) 620-5501
Fax: (650) 620-6395